

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 JANINE L. GRONEMAN,  
5 Plaintiff,  
6 v.  
7 MICHAEL J. ASTREW,  
8 Defendant.

Case No. 2:12-cv-01839-APG-GWF

**ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES**

(ECF No. 38)

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10 Plaintiff Janine L. Groneman's attorneys move for an award of attorney's fees following  
11 Groneman's successful motion for a remand for an award of benefits. No party opposed the  
12 motion, although the defendant filed an informative brief without taking a position on fees. I  
13 grant the motion.

14 Groneman entered into a contingency fee agreement with her attorneys for 25% of any  
15 past-due benefits awarded upon a court-ordered reversal of an unfavorable decision by an  
16 administrative law judge. ECF No. 38-2 at 1. I reversed the administrative law judge's decision  
17 in this case and remanded for an award of benefits. ECF No. 27. Upon remand, the Social  
18 Security Administration awarded Groneman \$77,153.00 in past-due benefits plus future monthly  
19 benefits.<sup>1</sup> ECF No. 38-3.

20 Groneman's attorneys present evidence that two lawyers and two paralegals expended  
21 28.7 hours on Groneman's case before this court. ECF No. 38-4. They request essentially the  
22 contingency amount of \$19,288.00.<sup>2</sup> I previously granted the parties' stipulation to award  
23 Groneman \$3,500.00 in attorney's fees under the Equal Access to Justice Act (EAJA). ECF No.

24  
25 <sup>1</sup> The award letter does not specify the amount awarded for past-due benefits but it states that the  
26 Administration withheld \$19,288.25 for potential attorney's fees. ECF No. 38-3 at 3-4. Based on the 25%  
cap on attorney's fees under 42 U.S.C. § 406, it appears the Administration awarded \$77,153.00 in past-  
due benefits.

27 <sup>2</sup> Groneman's attorneys have disclaimed any fee for work performed before the Social Security  
28 Administration. ECF No. 38 at 7.

1 36. Groneman’s attorneys agree they will credit this amount against any fee awarded under 42  
2 U.S.C. § 406(b). ECF No. 38 at 7; *see also Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002)  
3 (stating that a claimant may obtain fee awards under both § 406(b) and the EAJA but the attorney  
4 must refund the smaller fee amount to the claimant).

5 Under 42 U.S.C. § 406(b)(1)(A), when a claimant who is represented by counsel obtains a  
6 favorable court judgment, “the court may determine and allow as part of its judgment a  
7 reasonable fee for such representation, not in excess of 25 percent of the total of the past-due  
8 benefits to which the claimant is entitled by reason of such judgment.” This fee is payable out of  
9 the past-due benefits awarded to the claimant and not as an additional recovery from the  
10 defendant. *Id.*

11 Although other fee-shifting schemes resort to use of the “lodestar” method to calculate a  
12 reasonable attorney’s fee, § 406(b) is not a fee-shifting statute. *Gisbrecht*, 535 U.S. at 802. The  
13 statute requires the attorney’s fee be taken from the past-due benefits awarded to the claimant and  
14 not as an additional recovery from the defendant. *Id.* Thus, § 406(b) “does not displace  
15 contingent-fee agreements as the primary means by which fees are set for successfully  
16 representing Social Security benefits claimants in court. Rather, § 406(b) calls for court review of  
17 such arrangements as an independent check, to assure that they yield reasonable results in  
18 particular cases.” *Id.* at 807. The only statutorily-imposed constraint is that the fee agreement  
19 cannot “provide for fees exceeding 25 percent of the past-due benefits.” *Id.* (citing  
20 § 406(b)(1)(A)).

21 Consequently, in Social Security cases, I begin with the contingency fee agreement and  
22 then “test[] it for reasonableness.” *Id.* at 808. “[T]he question is whether the amount need[s to] be  
23 reduced, not whether the loadstar amount should be enhanced.” *Crawford v. Astrue*, 586 F.3d  
24 1142, 1149 (9th Cir. 2009) (en banc). I may reduce the fee award “based on the character of the  
25 representation and the results the representation achieved.” *Gisbrecht*, 535 U.S. at 808. Thus, I  
26 “may properly reduce the fee for substandard performance, delay, or benefits that are not in  
27 proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151. I may “consider the  
28

1 lodestar calculation, but only as an aid in assessing the reasonableness of the fee.” *Id.* (emphasis  
2 omitted).

3 The attorney seeking the fee award bears the burden of establishing the fee sought is  
4 reasonable. *Id.* at 1148. The award of fees under § 406(b) lies within my discretion. *Id.* at 1147.

5 The fee agreement in this case provides for an award of 25% of past-due benefits, which  
6 amounts to \$19,288.25. There is no evidence of substandard performance. Rather, counsel  
7 obtained a favorable result in the form of a remand for an award of substantial past and future  
8 benefits. There is no evidence counsel caused any delay to increase the contingent amount.  
9 Additionally, the fees are not excessively large in relation to the past-due and future benefits  
10 obtained for the claimant. *See* ECF No. 38-3 (Social Security Administration’s calculation on  
11 remand of past-due benefits of \$77,153.00 and future monthly benefits in the amount of  
12 \$1,014.00 per month). Groneman’s attorneys therefore have met their burden of establishing a  
13 reasonable fee award in the amount of \$19,288.00.

14 IT IS THEREFORE ORDERED that the motion for attorney’s fees (**ECF No. 38**) is  
15 **GRANTED**. Plaintiff Janine L. Groneman’s attorney, Marc V. Kalagian,<sup>3</sup> is awarded attorney’s  
16 fees pursuant to 42 U.S.C. § 406(b) in the amount of \$19,288.00.

17 IT IS FURTHER ORDERED that Marc V. Kalagian shall reimburse plaintiff Janine L.  
18 Groneman the amount of \$3,500.00 for EAJA fees previously paid by the Commissioner.

19 DATED this 5th day of January, 2017.

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22 ANDREW P. GORDON  
23 UNITED STATES DISTRICT JUDGE  
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28 <sup>3</sup> Although another attorney and two paralegals worked on the case, Groneman’s counsel has  
proposed a form of order directing payment to Marc V. Kalagian. ECF No. 38-1.